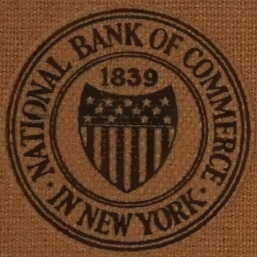
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INSURANCE TRUSTS

A Manual for Attorneys and Life Underwriters

by

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Vice-President and Trust Officer
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New York
1927

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INTRODUCTION

Five years ago the insurance trust was virtually unheard of. Today it is the most significant and outstanding class of business in the fields of trust service and life insurance. While the subject is one with which well-informed insurance underwriters and trust officials are conversant, some do not understand it in all its details and therefore avoid the subject as strange and unfamiliar ground. Many members of the bar when asked by a client to draft an insurance trust agreement are puzzled to know how to proceed. This book is designed to place ready information at the disposal of those interested and to direct those having occasion to deal with the subject in their professional and business lives to sources of authority from which detailed technical information may be procured.

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CHAPTER I.

Funded and Unfunded Insurance Trusts

In 1921 a manufacturer who had had considerable experience as a member of a firm of insurance brokers called on the trust officer of a bank to discuss with him the best method of using some of his savings to make provision for his two daughters. About the same time he sought the advice of a life insurance agent. Two courses seemed to present themselves: first, placing a sum of money in trust with the bank as trustee with a provision that the income on the trust fund should accumulate for the benefit of the manufacturer's daughters until his death, and that thereafter the income on the accumulated funds should be paid to the daughters regularly; second, the use of the funds which the manufacturer had available for the purchase of a full paid policy of insurance on his life, with his two daughters as beneficiaries of the policy.

Several meetings followed, including meetings between the life insurance agent and the trust officer without the presence of their

principal, and when the subject had been fully considered from every standpoint it was agreed by the insurance agent, the trust officer and the manufacturer that the plan which would result in the greatest net financial return was the following:

The manufacturer was to deliver to the bank a certain principal sum under a trust agreement and simultaneously was to make application for policies of *ordinary life* insurance in which the bank as trustee was named as beneficiary and which were to be deposited with the trustee in accordance with the agreement. The trust fund, properly invested, would yield sufficient annual income to pay the premiums on the life insurance policies and such income was to be used for this purpose and for the payment of the trustee's commission for handling the trust. The trust agreement contained a provision that upon the death of the manufacturer the bank should collect the proceeds of the policies and should hold such proceeds, with the sum originally deposited, as a trust fund, the income of which was to be paid to the daughters of the manufacturer for their respective lives. Thus one of the first funded insurance trusts came into being.

The original trust agreement was the sub-

ject of careful study and mature deliberation before it was signed. The many benefits and advantages to be derived by the donor of the trust and the beneficiaries were speedily recognized by trust officers and life insurance men alike. Life insurance trusts became a subject of consultation and discussion at conventions of life insurance underwriters and trust officials. Today joint meetings of life underwriters and trust officers are being held in every city and town in this country. The best minds have focused attention upon the form of insurance trust agreement. The form is by no means standardized, but the subjects which should be covered have been pretty well determined and the general nature of the various provisions of the agreement on these subjects has been decided. This form of trust is popularly known as the funded insurance trust from the fact that the securities deposited "fund" the life insurance policies.

Shortly after this trust was in satisfactory operation another business man inquired if it would not be possible for his family to enjoy the advantages of having the proceeds of his life insurance policies invested and administered by a bank as trustee, without the necessity of his depositing securities with the trus-

tee sufficient to produce an income equivalent to or greater than the annual premiums. It was suggested that the policies be deposited with the bank under a trust agreement and that the donor himself pay the premiums directly as long as he lived. This trust agreement was drawn accordingly. The insurance policies were delivered to the bank as trustee, the bank as trustee was named as beneficiary of the policies, and the trust was declared operative. This is the common form of insurance trust and is popularly described as the "unfunded" insurance trust. As a matter of fact, the unfunded form of insurance trust has been in use by a few institutions for many years, one trust company having been named as trustee of policies of life insurance in 1877, but neither the funded nor unfunded form of insurance trust received general recognition or widespread attention until after 1920.

CHAPTER II.

The Advantages of the Insurance Trust.

The insurance trust, even if it be unfamiliar to some persons, is by no means in the experimental stage. The sound principles of mortality experience and investment practice which characterize the administration of our insurance companies require no elucidation. The management of the proceeds of the policies by the banks and trust companies as trustee under the carefully phrased provisions of the trust agreement between the insured (who is called the "donor") and the bank or trust company as trustee is governed by principles of law and generations of practical experience dating back to the era of our Norman and Anglo-Saxon forebears. Centuries ago the English ancestors of our modern attorneys used the "Deed of Trust Inter Vivos" for the creation of trusts by some of their clients. The insurance trust agreement of today is not adapted from or similar to these deeds of established precedent. It *is* a "Deed of Trust Inter Vivos" covering the trusteeship of securities and life insurance policies

instead of the manors and medes of medieval England. The principles of law on which the insurance trust is based are, therefore, fundamental to the judicial system of this country and have been interpreted in countless decisions.

The advantages of the insurance trust to the insured and his family have been ably presented by speakers on the convention platform and by writers for life insurance and trust companies. They may be summarized as follows:

1. The funded insurance trust prevents lapse of the insurance policy for nonpayment of premiums during the life of the insured.
2. The insurance trust prevents dissipation of the proceeds of policies payable in a lump sum to the beneficiary.
3. The insurance trust permits a single uniform plan for handling the proceeds of policies in several different companies.
4. The insurance trust properly drawn gives to the trustee discretion and latitude permitting the expenditure of part or all of the principal of the trust fund if the necessities of the family of the insured require it.

5. The securities of the particular trust are earmarked and set apart, and being selected with discrimination and foresight should enhance in value and increase the annual income to the beneficiary.
6. The insurance trust makes cash immediately available for the prompt and judicious settlement of the insured's estate, avoiding the loss attendant upon forced sales.
7. The creation of an irrevocable insurance trust may effect a saving in State and Federal inheritance taxes.
8. The Federal gift tax having been repealed by the Revenue Act of 1926 is of no importance and constitutes no detriment or disadvantage to those contemplating the creation of a life insurance trust, whether funded or unfunded, at this time.

If the securities deposited under the funded insurance trust are selected with care and placed in the hands of a capable trustee for management there should be no interruption or diminution of annual income and there will be no interruption in the payment of premiums until the maturity of the policies.

It is generally agreed that lump sum payments of insurance policies to beneficiaries are

unwise. The proceeds of many policies have been dissipated in cases in which the beneficiaries could ill afford to stand the loss. Although at the present time a very large proportion of the business is written on the lump payment basis, each year shows a tendency either to have the policy issued with one of the option settlements providing for installment payments by the company, the holding of funds by the insurance company as trustee, or the deposit of the policies with a reputable financial institution under an insurance trust agreement.

The insurance trust permits a single uniform plan for handling the proceeds of several policies in the same company or policies in several different companies. Not infrequently a policyholder will be insured by four or five different companies and it is difficult, if not impossible, to arrange identical terms of settlement under all the policies. Furthermore, there is a definite advantage to the beneficiary in having the proceeds of the life insurance policies, whether one or several, paid to a trust institution. Trust officers are prepared and qualified, and their daily discharge of duty involves the counsel and advice to members of the decedent's family on financial questions of

confidential nature. The life insurance companies may not be prepared to render this service, nor is it feasible for them to build up an organization of this kind. The duty of a life insurance company is done when the beneficiary's check, whether principal or income, has been written and is in the mail. The problems of the family ordinarily begin and do not end with the receipt of that check by the beneficiary. If the administration of the family's funds is centered in a trust institution it greatly simplifies the problems of arranging the family budget.

One of the principal advantages of the insurance trust is its flexibility. The insurance policy is a contract governed by contract law requiring for fulfillment fixed payments at specified intervals. These payments may vary within certain narrow limits depending on the rate of dividend paid by the insurance company. No matter what change may occur in the circumstances of the family of the insured, the schedule of payments under the policy by the insurance company may not be altered once the payments have begun, but under the insurance trust agreement the trustee may be vested with discretion not only in respect of the time and amount of payments, but also

in respect of the use of the principal of the fund if necessary.

The education of children, serious illness or surgical operation may make the use of part of the principal of the fund absolutely necessary for the comfort and well-being of the beneficiaries. It may be important to withhold some of the income or some of the principal from the daughter of the insured who has married a wayward and profligate husband. Changes in a neighborhood may make it wise to sell the family residence and to purchase another home in a different part of the city. None of these emergencies can be adequately provided for in a life insurance policy, but under an insurance trust agreement the trustee may be given wide discretion in the employment and distribution of the principal and income of the trust fund to take care of the needs of the family as the insured would have liked to do had he been able to foresee the circumstances.

The laws of the different states require that trust assets be segregated and kept separate and apart from the general assets of the bank or trust company which acts as trustee. The securities which are purchased with the funds of a trust estate belong to that trust and the

greatest care is exercised in their selection. There is no basis for the spectre of possible loss because the trust estate may be the owner of individual securities which may deteriorate in value. It is the universal experience of trust institutions that the assets of trust estates in their charge have increased in value. Certainly the investments of the insurance companies have increased. Is it not reasonable to assume that the assets of the estates in the hands of the banks and trust companies will also increase in value, even though they be subdivided and held in small separate units? The risk of total loss to each estate is nil, and the risk of any loss is negligible.

The use of life insurance to protect the decedent's estate from depletion through forced sale of assets to meet inheritance taxes has been fully emphasized by all life insurance companies. The insurance trust agreement is the most effective instrument for accomplishing this result. If the policies are made payable direct to the executor of the insured the proceeds of the policies thereby become subject to Federal and State taxation as part of the estate of the deceased. The same is probably true if they are paid to a trustee with express direction to use the proceeds of

the policies for the purpose of paying inheritance taxes. If the policies are made directly payable to a named beneficiary without express direction to use the proceeds for the payment of inheritance taxes there is always the question as to whether or not the proceeds of the policies will be used for such purpose and if used will be wisely used. Under the insurance trust agreement, however, it is possible to provide that the trustee may use the proceeds of the policies for the purpose of making loans to the executor of the insured or for the purpose of buying assets from the executor. In making plans for the settlement of his estate the insured will regard the beneficiaries of his insurance trust and the beneficiaries of the estate under his will with the same degree of benevolence, and it is therefore a matter of little or no importance whether the inheritance taxes are in effect paid from the funds in the hands of his executor or from the funds in the hands of the trustee under his insurance trust agreement. For taxable status of proceeds payable to a trustee under an insurance trust agreement with specific direction to use the funds to pay inheritance taxes, see page 68 infra; for possible State and Federal inheritance tax saving, see pp. 57-72 infra.

CHAPTER III.

Mutual Interests of Insurance Company and Trustee

There is a mistaken idea on the part of many life underwriters that the banks and trust companies soliciting insurance trusts are in competition with the life underwriters who sell policies containing certain option settlements. That this is a mistaken idea is nowhere better emphasized than in the book issued by the National Association of Life Underwriters entitled, "Joint Life Insurance and Trust Company Service," in which it is stated in bold-faced type on the first page of text, "The primary object of life insurance is to create estates. Trust companies* were invented to administer them." Most of the insurance companies are authorized by charter to hold the proceeds of policies in trust for the beneficiary of the policy, and some life underwriters believe that it is to the advantage of their company to have the proceeds of the policies held under this option instead of being

* Which include national banks with trust departments.

paid in a lump sum to a bank or trust company as trustee under an insurance trust agreement. This erroneous impression has frequently been repudiated by the important executive officials of the life insurance companies.

The two classes of institutions, the life insurance companies and the trust institutions, are *not* in competition. Their respective services are adapted to the needs of the policyholder and depend upon family circumstances which may be as varying as the personalities of the policyholders themselves. There are times when the services of the trust institution and the life insurance company appear to overlap, but a careful study of the situation of the policyholder will clearly demonstrate that in each case the insurance trust agreement or the option settlement under the policy, the one or the other, is more suitable. Where small amounts are involved, particularly where the amount of insurance is less than $25,000, the expenses of administering a small trust estate by a bank or trust company usually make the net return to the beneficiary of an insurance trust agreement less than if the policy is written with one of the option settlements requiring the payment of the principal of the policy by the insurance company to the bene-

ficiary in installments over a period of twenty years or longer. Where, however, the amount of insurance is in excess of $25,000, the insurance trust passes the point where it cannot be economically administered by a bank or trust company and its special advantages make it preferable.

One of the apparent points of rivalry deserves brief mention.

Guarantee of Income and Rate of Return: In case of option settlement under the policy the insurance company guarantees the beneficiary a minimum rate of return, usually 3½, with additional return depending upon the annual dividend of the insurance company. Under the insurance trust agreement the bank or trust company acting as trustee does not guarantee the integrity of the principal or the minimum annual income. Under the insurance trust agreement, however, the proceeds of the policies are earmarked and set apart as a separate fund. They are invested with care and discrimination. Any enhancement in value accrues to the benefit of the trust alone, and the rate of income depends entirely upon the income produced by those particular securities. Similarly if poor judgment is exercised in the investment of the fund

and the principal is depleted or the income reduced the beneficiary of that trust alone suffers. This is a possible risk, but the experience of trust institutions throughout the country over many years shows that the risk of loss in principal and the consequent reduction of income are virtually unknown.

To offset this slight risk of loss which is inherent in the insurance trust agreement the rate of income paid the beneficiaries of trusts by trust institutions, making due allowance for the trustee's commission and other expenses, is on the average higher than the rate of income including dividends paid by the life insurance companies. During the year 1927 rates of interest to be allowed by twenty-six of the life insurance companies operating in New York State are as follows: five will pay a rate of return to the beneficiaries of 5.00%, one will pay 4.85%, eight will pay 4.80%, three will pay 4.75%, four will pay 4.70%, one will pay 4.60% and four will pay 4.50%. In the northeastern section of the United States, consisting of Maine, New Hampshire, Massachusetts, Vermont, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, District of Columbia, and Ohio, the average net annual return on trust

funds invested by corporate trustees paid to the beneficiaries of voluntary trusts over many years was 5.2333. These calculations make allowance for the deduction of the cost of administering the trust and the trustee's commission.

In the case of the proceeds of the policies held by the insurance company the principal of the fund can never increase, while the increase in annual income depends upon the general earnings of the insurance company and, being distributable to all policyholders of the company, can never reach a really large sum in any individual case. In the case of the proceeds of the policies held by the trustee of the insurance trust, wise selection of investments and constant touch with financial markets by the trustee usually mean gradual but steady increase of principal with corresponding increase in income.

The business of the trust officer requires him to advise daily in the solution of problems of family circumstance and finance. Trust officers expect to be called on and interviewed and to have their advice sought in many matters of a personal and confidential nature. This privilege is one which the beneficiary of an insurance trust agreement may al-

ways exercise. On the other hand, payments to be made by the insurance company under one of the option settlements of the policy are fixed and can be varied only to the extent that the interest earned on the investments of the insurance company permit. The circumstances and conditions of the beneficiary can have no bearing upon either the date or the amount of the payments to be made by the insurance company. As pointed out earlier the work of the administrative personnel of the life insurance company does not include the discussion of intimate family and personal financial problems with individual policyholders or their beneficiaries. Most of the life insurance companies state with perfect candor that they would prefer to pay the proceeds of the policies in a lump sum over to a bank or trust company as the trustee of an insurance trust agreement and thus have their liability ended rather than to continue to hold the proceeds of the policies paying the income at stated intervals to the beneficiary. A careful study of the needs of the family and the individual preference of the policyholder will establish that either the service of a bank or trust company as trustee under an insurance trust agreement, or permitting the proceeds

of the policy to remain in trust with the life insurance company, the one or the other, is more suited to the needs of the particular policyholder.

CHAPTER IV.

Legal Aspects of the Insurance Trust. Validity of the Trust and Points to be Covered in Agreement

The rules of law which are ordinarily applicable to the deed of trust inter vivos apply to the insurance trust agreement. There must be a donor with valid title to the trust res, a donee with capacity to accept title, a transfer and delivery of the property founded on good and valuable consideration and finally a trust instrument containing limitations governing the distribution of principal and income not violative of the rule against accumulations, the rule against suspension of alienation, the rule against perpetuities, and other recognized rules of statute and substantive law. First, with respect to the parties, the donor may be any person of full age and not under disability and in almost every instance is the insured of the insurance policies which are deposited as part of the trust estate. In most insurance trusts, the donor and the insured are one and the same person. But there is no sound reason

why the insurance policies cannot be written on the life or lives of any one or more persons, provided always that the laws with respect to insurable interest and against restraint of alienation are complied with. If the donor is an elderly man who is interested in building up an estate for his daughter or for a grandchild it might be more advantageous to have the insurance cover the daughter's husband, or one of the donor's own children. But as stated, in most cases the insurance is placed on the donor's own life.

The trustee may be any national bank authorized by the Federal Reserve Board to exercise trust powers and duly qualified in the State in which located, any State bank or trust company having requisite charter power, or any individual. If, for some special reason, it is considered important to have an individual trustee it is customary and highly desirable to have a trust institution as co-trustee.

The consideration consists of the promise of performance of the active duties of trusteeship by the trustee at the request of the donor at the time of the execution of the trust agreement against delivery of securities and/or policies of insurance by the donor.

The subject matter of the trust consists of the policies of insurance on the life of the donor and any other personal property, income producing or otherwise. The words of conveyance and transfer in the ordinary funded insurance trust agreement constitute an assignment and are sufficient to vest title to the insurance policies in the trustee, but as a practical matter the insurance companies request or require that a separate instrument evidencing the assignment be executed by the insured. In the unfunded trust, an assignment is usually undesirable and the language of the clause under which the insurance policies are delivered to the trustee should evidence a mere delivery for custody and not an assignment. See form of funded and unfunded insurance trust agreements, Chapter VI.

Although in the beginning there was an inclination on the part of some courts to regard life insurance policies with suspicion as gambling contracts any person who, through love and affection or financial considerations, is interested in the continued existence of the insured is held to have an insurable interest and an insurance contract taken out by, or for the benefit of, such person is valid. The tendency to void insurance policies on the ground

of lack of insurable interest by the beneficiary in the insured has largely disappeared. It is clear that there is no lack of insurable interest when the donor of the trust takes out the insurance on his own life for the benefit of his estate or where, as is sometimes the case, the trustee of the insurance trust agreement makes the application for insurance paying the premium with funds for that purpose furnished by the insured under an agreement by which the proceeds of the policy are to be held for the benefit of the immediate family of the insured. It has never been seriously suggested that any insurance trust agreement lacked validity because of want of insurable interest on the part of the trustee of the agreement. See, generally, Life Insurance, 37 Corpus Juris 385.

Rule against perpetuities and rule against restraint of alienation.

The rules of law with respect to the time within which an estate must vest and with respect to the period of time during which the right of alienation may be suspended are fully applicable to the funded and unfunded insurance trust. The same principles which govern

the construction of wills and deeds of trust inter vivos apply to the construction of insurance trust agreements. The date from which the duration of the trust is to be measured is the date of its execution. The two lives (under the law of New York) during which the trust may continue must then be in being. This is particularly important in view of the fact that donors of insurance trusts frequently wish to make provision for afterborn children corresponding to the limitations contained in their wills. A will, speaking as of the date of death, can use any two lives in being at the time of the testator's death to measure the duration of the trust regardless of the date of the execution of the will, but a deed of trust, speaking as of the date of execution, may suspend the alienation of the property which the trust governs only during the period of two lives in being at the date of the execution of the trust. It may not be drawn to continue during two lives in being at the time of the death of the donor of the trust. In determining the period of time during which the trust is to be operative the fact that the subject matter of the trust consists of insurance policies on the life of the donor does not increase or reduce the period during

which the trust is to operate, such period being fixed by the limitations in the deed and not by the subject matter of the property held by the trustee. Any attempt to discuss the principles of statute and substantive law having to do with the rule against perpetuities and the rule against restraint of alienation is beyond the compass of this work.

There is usually little to be gained through making an unfunded trust in irrevocable form, and even though the insured may not anticipate any need arising which will make it necessary for him to revoke the trust, in whole or in part, and withdraw the policies, it is well to have that right vested in him in case some unexpected emergency should arrive. The unfunded trust is after all an arrangement which the insured wishes to make for the handling of the proceeds of his policies after his death, and the agreement to effect this purpose should be drawn so as to permit the donor to continue to exercise dominion over his policies as long as he lives with as little formality and red tape as possible. In the absence of broad power and authority reserved to the donor under the trust agreement the insurance companies may require rather formal and detailed instruments to be signed by the trus-

tee and in some cases by the beneficiaries of the trust in case the donor wishes to revoke the trust and retake the policies for his own use.

In the funded trust the trustee should be given full power and discretion to deal with the policies as the absolute owner thereof with the same authority as though it were the insured, that is, if investigation satisfies the trustee that the surrender of a given policy or the exercise of an option under the policy is desirable the trustee should have full power and authority to exercise any right or option given by the terms of the policy. The trustee, however, must be particularly careful that policy changes are necessary before surrendering any policy. It will thus avoid accusations or suspicion on the part of underwriters that the trustee is engaged in the reprehensible practice of "twisting." In maturing endowment policies there are often elections as to the method of payment, purchase of additional insurance, etc., to be exercised by the beneficiary and in such case it is important that the trustee be in a position to execute any instrument of election, option, receipt, release or other paper necessary to effectuate the settlement.

The payment of premiums should be fully

covered in the trust agreement. The unfunded trust should contain a covenant on the part of the donor to pay all the premiums when due. It is also well to provide that the trustee has no duty whatever with respect to such payments. In the absence of such a provision it might be urged with some force that the trustee, while under no duty to pay the premiums, was under the duty of keeping itself informed as to the payment of such premiums by the donor and this is a responsibility which the ordinary unfunded insurance trust agreement does not contemplate. The donor may, if he so desires, lodge the receipts for premiums with the trustee from time to time, but the trustee should not have any duty to obtain such receipts.

In funded life insurance trusts, the trust agreement should contain an undertaking on the part of the donor of the trust that if the income from the securities is at any time insufficient to pay the premiums in full the donor will make up any balance of premium necessary, on the request or demand of the trustee. In the case of funded insurance trusts the income will almost never, if ever, exactly equal the amount of premiums due on the policies of insurance. The insurance trust

agreement should, therefore, specify the disposition to be made of any balance of income remaining in the hands of the trustee. To provide for contingencies it might be well to authorize the trustee to retain a minimum balance of income in its possession and to distribute any income in excess of that minimum balance once annually. Such surplus may be used for the purchase of additional insurance or in reduction of premiums. It is probably to the advantage of the donor to have the surplus income applied to increase the amount of insurance. If so applied it will not constitute an accumulation within the meaning of the New York statute, but if held by the trustee for any substantial period of time it will constitute an accumulation and be within the prohibition of the statute; thus it would have to be paid over to the beneficiary or to the donor's next of kin and cease to be part of the trust estate, whereas if applied to the purchase of increased insurance it will to that extent increase the principal amount of the estate. The important thing is that the trust agreement specify exactly what disposition is to be made of excess income.

In the funded trust the trust agreement should contain a specific direction to the trus-

tee to use the income from the securities for the payment of the premiums on the life insurance policies. One of the most serious responsibilities which the trustee undertakes is to see to the payment of premiums on the policies. Careful records and follow-up systems must be established to make sure that every premium falling due is paid if funds are available. A clerical error resulting in non-payment of a premium and the consequent lapse of the policy might be a matter of serious liability to the trustee. In some cases the insurance companies have arranged, in case of the non-payment of premiums on policies held under an insurance trust, to write a personal letter to one of the senior officers of the trustee informing him of this fact, but most of the insurance companies do not wish to be put to this annoyance and the burden of seeing that the premiums are promptly paid rests on the shoulders of the trustee alone.

The agreement must fully cover the disposal of any dividends on the policies. In the case of the unfunded trust it is customary to provide that the donor shall have the right to receive all dividends on policies without accountability. In the case of the funded trust dividends may be used in several ways. They

may be payable to the donor. They may be used by the trustee in reduction of premiums, in the purchase of additional insurance on the life of the donor, or for accumulation within the limitations permitted by law. The provision of the New York statute makes it desirable in most cases to provide that dividends on the policies are to be used for the purchase of additional insurance. There may be cases in which it is desirable to have any surplus income remaining after the payment of premiums returned to the donor. If the donor wishes to provide for the distribution of any surplus income remaining after the payment of premiums direct to the beneficiary or to some one other than himself, care should be taken to ascertain that the trust does not extend beyond the period permitted for the suspension of alienation of property. The properly drawn trust agreement should contain full provision as to the disposition of the dividends.

It is important that the classes of investment for the employment of the trust fund be specified in the trust agreement. Of course, in the absence of specific provision the trustee is limited to securities which are legal investments for savings banks and trust com-

panies in New York State. Many persons prefer, however, that the trustee shall have some latitude in the selection of investments and are willing to confide the investment of the trust fund to the unlimited discretion of the trustee. The policy of all trust institutions is so conservative and sound in investment matters that the securities selected for investment are usually legal securities or securities which take equal rank with legal securities, although not on the legal list. In some cases donors prefer to indicate a preference for certain classes of investments such as municipal bonds, mortgages, preferred and even high grade common stocks. The trustee is entirely willing that the investments be limited or extended in any way the donor may desire, provided always that the precise limits are clearly fixed in the trust agreement. The performance of the trustee's duty is, if anything, made easier by limiting the investment of the trust funds to legal investments than by giving the trustee unlimited authority.

The insurance trust agreement may properly contain provision fixing compensation to the trustee. This is not necessary but it is probably desirable. The rates of commission are prescribed in the New York Civil Practice

Act, Section 1548, as amended by the Act of February 2, 1926, which became operative September 1, 1926, as follows:

> "For receiving and paying out all sums of principal not exceeding two thousand dollars, at the rate of five per centum.
>
> "For receiving and paying out any additional sums of principal not exceeding twenty thousand dollars, at the rate of two and one-half per centum.
>
> "For receiving and paying out any additional sums not exceeding twenty-eight thousand dollars, at the rate of one and one-half per centum and for all sums above fifty thousand dollars, at the rate of two per centum.
>
> "For receiving and paying out income in each year, at the like rates."

There is only one commission on principal for the entire period of the trust. There is an annual commission on the income of the trust.

Rule Against Accumulations

Prior to the 1927 session of the New York Legislature some doubt had been expressed as to whether or not the funded insurance trust directed an accumulation of income in violation of the New York Personal Property Law. At the 1927 session of the legislature, the personal property law was amended, Chapter 681, Laws of 1927. (Amendment italicized.)

AN ACT

To amend the personal property law, in relation to trusts or providing for the payment of premiums on insurance policies.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section sixteen of chapter forty-two of the laws of nineteen hundred and nine, entitled "An act relating to personal property, constituting chapter forty-one of the consolidated laws," as amended by chapter six hundred and seventy of the laws of nineteen hundred and fifteen, is hereby amended to read as follows:

§ 16. Validity of directions for accumulation of income. An accumulation of the income of personal property, directed by any instrument sufficient in law to pass such property is valid:

1. If directed to commence from the date of the instrument, or the death of the person executing the same, and to be made for the benefit of one or more minors, then in being, or in being at such death, and to terminate at or before the expiration of their minority.

2. If directed to commence at any period subsequent to the date of the instrument or subsequent to the death of the person executing it, and directed to commence within the time allowed for the suspension of the absolute ownership of personal property, and at some time during the minority of the persons for whose benefit it is intended, and to terminate at or before the expiration of their minority.

3. All other directions for the accumulation of the income of personal property, not authorized by statute, are void. In either case mentioned in subdivisions one and two of this section a direction for any such accumulation for a longer term than the minority of the persons intended to be benefited thereby has the same effect as if limited to the minority of such persons, and is void as respects the time beyond such minority.

Here follow certain provisions which are not appropriate in consideration of the present subject.

Provided that a deed or other instrument which creates or declares a trust in property consisting of or including a policy or policies of life, health, accident or disability insurance and directs that the income of such trust shall be applied in whole or in part to the payment of premiums upon such policy or policies shall not be considered as effecting an accumulation either of the income so used for the payment of premiums or of the dividends on such policy or policies.

§ 2. This act shall take effect immediately.

The ordinary funded life insurance trust is, therefore, not an accumulation so far as the use of income for the payment of premiums on the life insurance policies is concerned, and with respect to the other aspects of the trust the rule against accumulations has the same application as in any other deed of trust inter vivos and no more.

Revocability

The validity of the trust is in no wise affected by the revocable or irrevocable character of the trust created, but the donor's position with respect to the Federal and State income taxes and with respect to the Federal and State transfer and estate taxes may be materially affected by the revocable or irrevocable character of the trust. The status of the

donor of the trust with respect to these taxes is more fully discussed in a later chapter.

CHAPTER V.

Matters Requiring Attention of Lawyer and Insurance Underwriter after the Trust Agreement Has Been Executed

In some cases it may be desirable to have the insurance trust agreement recorded. The attorney will, in each case, be the best judge of this requirement. Although it sometimes facilitates the work of the trustee in the transfer of stock and registered bonds belonging to the trust estate, it is generally not necessary. The donor may execute separate powers of attorney covering the different stocks and bonds. The transfer agent of corporate securities will require that a certified copy of the insurance trust agreement or a copy certified by the trustee to be a true and correct copy be lodged with it permanently.

The insurance trust agreement may be made to cover policies of life, health, accident and disability insurance. The insured usually prefers to retain accident, health and disability insurance for his own purposes and policies of this character are therefore seldom included

under insurance trust agreements. Except for the personal preference of the insured to retain such policies for his own use there is no reason why accident, health and disability insurance policies should not constitute part of the subject matter of an insurance trust. Any form of life policy contract may be deposited with the trustee under an insurance trust agreement, whether funded or unfunded, except war risk insurance policies issued by the United States Government. While it is possible to have these policies made payable to the executor of the insured's estate, the rulings of the Internal Revenue Department have not included the trustee of an insurance trust agreement of the insured as within the permitted class of beneficiaries under the terms of the War Risk Insurance Act.

The form of policy most frequently used is the ordinary life contract. In some cases term policies are desirable. In the endowment policy or the 20 payment life policy the principal advantages to the insured, i. e., the accumulation of funds by the insurance company to eliminate the payment of premiums by the insured after the twentieth year, or the policies which by their terms are payable in installments, involve features which are mere

duplication of the ordinary work of the trustee under an insurance trust agreement. There may, however, be cases in which the state of health, the earning capacity, age and other circumstances of the insured may make one of the above forms of policy more desirable as the subject matter of an insurance trust agreement than the ordinary life contract. This is a subject on which the joint opinion of the life underwriter and the trust officer should be obtained.

Trust officers lacking experience with the various forms of life insurance policies, rates of premium and rates of dividend applicable thereto would do well to place in their libraries "Life Insurance" by Professor S. S. Huebner of the University of Pennsylvania, and the Flitcraft Life Insurance Manual, published by the Flitcraft Life Insurance Works of Oak Park, Illinois.

Practice is not uniform in regard to the method of fixing the rights of the trustee in the policy and its proceeds. In the case of the unfunded trust it is sufficient to have the donor sign the usual change of beneficiary blank which can be obtained from the office of the insurance company. In the case of the unfunded trust it is also customary to pro-

vide that the trustee is to have no duties other than that of safekeeping of the policies until the death of the donor, and under such an agreement there is no necessity of having the insured execute an assignment of his interest in the policies. In the unfunded trust, however, where affirmative action by the trustee with respect to the policy during the donor's life is required and *in all cases in the funded trust,* it is better to have the donor execute a separate assignment of his interest in the policy as well as the change of beneficiary blank.

By executing the change of beneficiary blank the insured directs that upon his death the proceeds of the policies are to be payable to the person named. In most policies, however, there is nothing to prevent the insured from executing these changes of beneficiary, sometimes without the production of the policy, and he might by the execution of an assignment after the execution of a change of beneficiary prevent the trustee from receiving any of the proceeds of the policy, defeat the purpose of the trust and thus subject the trustee to a claim by the beneficiary of the trust for failure to collect the policy. In any case in which there may be some liability on

the part of the trustee it is important to prevent any such action by the insured and if an assignment of the insured's interest has been executed and lodged with the insurance company he cannot take any action in derogation of the trust without the trustee being fully informed of it. Counsel for some of the insurance companies maintain that if the insured executes an assignment it is mere surplusage to have the insured execute a change of beneficiary blank as well; but even though it makes assurance doubly sure it is good practice on the part of the trustee when taking an assignment to have a change of beneficiary executed as well, so that an examination of the policy will show that the trustee is the only person having any right or interest in the policy whatever. In existing policies the insured may not have reserved the right to change the beneficiary and assignment may be the only method of vesting the title to the policy in the trustee. In such cases, the deed of trust should be drawn so as to afford full protection to the trustee.

Counsel for the insurance companies are usually strict in their requirements as to the wording of the change of beneficiary lest the acceptance of the change of beneficiary be held

to put the insurance company on notice of the details of the trust, and thereby it be held liable to see that the trust agreement is fully carried out. This frequently involves delay. It is, therefore, recommended that counsel for the donor procure the change of beneficiary blank and have it executed by the donor of the insurance trust agreement, making the policies payable upon the death of the insured to

> *"National Bank of Commerce in New York, trustee under Deed of Life Insurance Trust of John Doe dated January 1, 1927, without any liability on the part of the insurance company to see to the application of the proceeds of the policy or the carrying out of any trusts."*

Some insurance companies prefer to have the name of the beneficiary no more specific than

> *"National Bank of Commerce in New York, trustee without any liability on the part of the insurance company to see to the carrying out of any trust."*

In effecting a change of beneficiary many insurance companies will require that a copy of the insurance trust agreement, certified if it has been recorded or certified by the trustee as a true and correct copy if it has not been

recorded, be lodged with the insurance company permanently. Even if it is not required it is good practice to have a copy of the insurance trust agreement on file in the office of the insurance company.

CHAPTER VI.

The Insurance Trust and Its Effect on Taxes

While there is a considerable degree of general familiarity with the subject of life insurance trusts, actual experience in the management of such trusts is somewhat limited. Practical considerations in the handling of the trust and the legal effect of various phases of the trust relationship should be carefully studied.

1. Taxable Status of the Donor and Insured With Respect to Income Taxes

FEDERAL

Ordinarily the income of a trust paid to a beneficiary of the trust is taxable to the beneficiary. This general and somewhat obvious rule is subject to certain restrictions. The Revenue Act of 1926, Section 219H, provides:

"Where any part of the income of a trust may, in the discretion of the grantor of the trust, either alone or in conjunction with any person not a beneficiary of the trust, be distributed to the grantor or be held or accumulated for future distribution to him, or where any part of the income of a trust is or may be applied to the payment of premiums

upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in paragraph (10) of subdivision (a) of section 214), such part of the income of the trust shall be included in computing the net income of the grantor."

It is thus seen that the taxable position of the donor of the trust and the insured is affected by two considerations; first, whether or not any of the income may be or could become distributable to the donor, and second, whether the income is to be used by the trustee for the payment of premiums on any policies of insurance on the life of the donor.

If, by the terms of the trust agreement, any of the income is directly payable to the donor of the trust, it is obvious that it must be included by the donor of the trust in his own income tax return. If, by the exercise of a power reserved to him, the income of the trust may become payable to the donor the requirement that income of the trust be included by him in his own income tax return is a legislative innovation, the exact effect of which cannot be determined until the act has been judicially construed. If a man creates a bona fide trust with an independent trustee

the income from the trust being payable to his son or daughter or some other member of his family, but wishes in case of emergency or disaster to be in a position to revoke the trust and take back the property, it is rather severe to require that while the trust is in effect the income from the trust must be returned by the donor as part of his own income and tax paid thereon.

It is rather anomalous to consider the same money as the income of two different individuals, and yet under the circumstances above outlined it might appropriately be argued that the income of the trust was the income of both the donor of the trust and the beneficiary, and taxable to each of them. On the other hand, it is perfectly true that a few unscrupulous people desiring to avoid their rightful tax responsibilities have accomplished freak transfers of securities and have gone through absurd and meaningless ceremonies describing the transactions as "revocable trusts" and thus have brought discredit on the bona fide revocable trust which plays an important part and fills a real need in our economic system. Whether or not Congress can appropriately say that because a man may at some later date have the income of a trust made payable to

him he may be required to include as part of his own income for tax purposes this year and every succeeding year income which he never receives, is a debatable question. It has been the subject of discussion and controversy, and is now the subject of litigation. Corliss v. Bowers, U. S. District Court for Southern District of New York.

While it is not certain that the requirement of the Internal Revenue Act that the income of a revocable trust be included in the income of the donor can be sustained, it is quite clear that the donor of an irrevocable trust, the income of which is payable to another, stands on much firmer ground. It is perfectly clear that if insurance policies were not included in the trust there would be absolutely no justification for attempting to require the donor of an irrevocable trust to include any of the income of the trust in his own income.

Under the present Act of Congress the donor of an insurance trust, even though it be irrevocable in character, is required to include as part of his own income that part of the income paid out in premiums on policies on his own life, but the validity of this is subject to even more serious question than the provision quoted with respect to the income of

a revocable trust. The Sixteenth Amendment to the Constitution gave Congress "power to lay and collect taxes on *incomes*" and not on what Congress chooses to call "incomes" without legal justification or reason. The Supreme Court of the United States has said that while Congress is fully justified and authorized to define the term "income" within reasonable limits, Congress has no right and power to bring within the definition some subject matter which is manifestly and inherently *not* income. In other words, the Congressional power and authority to legislate do not go so far as to make something income which is *not* income. In Eisner v. Macomber, 252 U. S., page 206, the Supreme Court of the United States says:

> "In order, therefore, that the clauses cited from Article I of the Constitution may have proper force and effect, save only as modified by the Amendment, and that the latter also may have proper effect, it becomes essential to distinguish between what is and what is not 'income,' as the term is there used; and to apply the distinction, as cases arise, according to truth and substance, without regard to form. Congress cannot by any definition it may adopt conclude the matter, since it cannot by legislation alter the Constitution, from

> which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully exercised."

Taking this language in its plain and common acceptation it is at least arguable that the income from an irrevocable trust, which is payable to someone other than the donor, whether it be used to pay premiums on policies of insurance on the life of the donor of the trust or not, is *not* income of the donor regardless of what Congress may say about it and is therefore not taxable as income to the donor.

The Federal Revenue Act of 1921, Section 219, provided that "the income of estates or of any kind of property held in trust, including * * * income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests; income held for future distribution under the terms of the will or trust" should be taxable to the trustee and not to the beneficiary or to the donor. It is quite clear that the income of funded insurance trusts in operation under the Internal Revenue Act of 1921, such income being used for the payment of premiums or insurance policies and not distributed direct to the beneficiary, was taxable to the trustee, the trust

constituting a taxable entity, entitled to an exemption of $1,000, on the same basis as an individual. An identical provision is found in the Revenue Act of 1926, but the operation of Section 219 in the Act of 1926 is qualified by the provision with respect to the income of the trust used for the payment of premiums above quoted. It has been suggested that in the event the provision for the taxation of income used for the payment of insurance premiums is invalid, the income so used would be taxable to the trust as an entity in conformity with the practice under the 1921 act.

New York Income Tax

The New York personal income tax was based on the Federal Revenue Act and the provisions of the statute are for the most part identical with the provisions of the Federal Act. The pertinent provision is contained in Section 365 of the Act reading as follows:

> "Estates and trusts—1. The tax imposed by this article shall apply to estates and trusts, which tax shall be levied, collected and paid annually upon and with respect to the income of estates or of any kind of property held in trust, including:
>
> a. Income received by estates or deceased persons during the period of administration or settlement of the estate;

b. Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;

c. Income held for future distribution under the terms of the will or trust;

d. Income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of an infant to be held or distributed as the court may direct; and

e. Income of an estate during the period of administration or settlement permitted by subdivision three to be deducted from the net income upon which the tax is to be paid by the fiduciary.

2. The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts, whether such income be taxable to the estate or trust or to the beneficiaries thereof. The net income of an estate or trust shall be computed in the same manner and on the same basis as provided in this article for individual taxpayers, except that there shall also be allowed as a deduction any part of the gross income which pursuant to the terms of the will or deed creating the trust, is paid to or held for the United States, any state, territory, or any political subdivision thereof, or the District of Columbia, or any corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stock-

holder or individual; and in cases under paragraphs d and e of subdivision one of this section, the fiduciary shall include in the return a statement of each beneficiary's distributive share of such net income, whether or not distributed before the close of the taxable year for which return is made.

3. In cases under paragraphs a, b and c of subdivision one of this section, the tax shall be imposed upon the estate or trust with respect to the net income of the estate or trust and shall be paid by the fiduciary, except that in determining the net income of the estate of any deceased person during the period of administration or settlement there may be deducted the amount of any income properly paid or credited to any legatee, heir or other beneficiary. In such cases, the estate or trust shall be allowed the same exemptions as are allowed to single persons under section three hundred and sixty-two, and in such cases an estate or trust created by a person not a resident and an estate of a person not a resident shall be subject to tax only to the extent to which individuals other than residents are liable under section three hundred and fifty-nine, subdivision three.

4. In cases under paragraphs d and e of subdivision one of this section, if the distribution of income is in the discretion of the fiduciary, either as to the beneficiaries to whom payable or as to the amounts to which any beneficiary is entitled, the tax shall be imposed upon the estate or trust in the manner provided in subdivision three of this section, but without the deduction of any

amounts of income paid or credited to any such beneficiary. In all other cases under paragraphs d and e of subdivision one of this section, the tax shall not be paid by the fiduciary, but there shall be included in computing the net income of each beneficiary his distributive share whether distributed or not, of the net income of the estate or trust for the taxable year, or, if his net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of such estate or trust ending within the fiscal or calendar year upon the basis of which such beneficiary's net income is computed. In such cases the income of a beneficiary not a resident, derived through such estate or trust, shall be taxable only to the extent provided in section three hundred and fifty-nine, subdivision three, for individuals other than residents."

This provision of the New York Personal Income Tax Act is almost identical with the Federal Revenue Act of 1921, Section 219. Accordingly, the income of a funded insurance trust under the laws of New York is taxable to the trustee and is not taxable to the donor except to the extent that any of the surplus income not required for the payment of insurance premiums is returned to the donor.

Transfer, Estate and Inheritance Taxes

The taxable status of the proceeds of insurance policies on the life of the decedent is to a certain extent undetermined. The subject must be viewed with two considerations in mind: first, are the proceeds of the insurance policies taxable as part of the estate of the decedent by the specific provisions of the acts of Congress and of the State because of their inherent character regardless of whether the tax imposed takes the form of transfer, estate or succession tax, or, second, are the proceeds of the insurance policies taxable because they represent property transferred in contemplation of death, or property interests taking effect in possession and enjoyment at or after the death of the insured.

Federal

First, with respect to the Federal statutes, the taxable status of the proceeds of policies of insurance on the life of a decedent has been prescribed in the Revenue Act of 1926.

> "Sec. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated. (g) To the extent of the amount re-

> ceivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over $40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life."

It is and has at all times been quite clear that the proceeds of insurance policies, which by their terms are payable to the executor or administrator of an insured's estate constitute part of the gross estate of the decedent and as part of that estate are taxable. Congress first endeavored to include the proceeds of insurance policies on the life of a decedent payable to some one or more persons other than the executor or administrator of the insured by the Revenue Act of 1916 which provided that in calculating the gross estate of the decedent there should be included property to the extent of any insurance payable direct to the executor or administrator of the estate and all other insurance in excess of $40,000 payable to a named beneficiary or beneficiaries taken out by the decedent on his own life. The Act of 1916 was not by its terms retroactive, but in later statutes the clause above quoted was enacted with slight variations and the later acts were by specific provision made applicable to

all estates and property interests whether acquired by the decedent before or after the passage of the act. There is, and has been, a serious question as to the right of Congress to classify insurance and in effect to impose a tax on the proceeds of life insurance policies in excess of $40,000 in amount. It is of vital interest to all life insurance companies and life underwriters, as well as to trust officials, that the exact effect of the Federal legislation above quoted be determined as promptly as possible.

It was confidently believed that after the death of the late Henry C. Frick at Pittsburgh the United States Supreme Court would decide all the vexing questions of law as applied to the proceeds of life insurance policies which the Congressional legislation had raised. In that case at the time of his death there were outstanding eleven policies of insurance on the decedent's life, four of which were payable to his wife and seven to his daughter. The policies were of different classes. Some were made payable to Mr. Frick's estate with no provision for change of beneficiaries but were subsequently assigned to his wife and daughter without reservation of power to revoke the assignment. Some were of like character and were so assigned with power reserved to re-

voke the assignment. Some were made payable to Mr. Frick's executors and subsequently by arrangement with the company were made payable to his daughter as beneficiary without power reserved further to change the beneficiaries. In others the wife and daughter were named as beneficiaries, the policies containing no power which enabled the insured to change the beneficiaries. In short, this case in the amount, kind, and character of life insurance policies involved, presented almost every conceivable set of circumstances which would have any influence from a legal standpoint in determining the constitutionality of the statutes which require the inclusion of the proceeds of life insurance policies in the gross estate of the decedent for the Federal estate tax.

Extensive argument was made on several points of law, inter alia, that the policies of insurance were property which belonged not to the estate but to the beneficiaries; that it was not due process of law to compel the executors to pay an estate tax on property which was not part of the decedent's estate but belonged to Mrs. Frick and Miss Frick; that if it was regarded as an excise tax it was illegal because not uniform, and that if it was regarded not as an excise tax but as a direct tax

it was illegal because not apportioned among the States. (See the able brief of Gordon & Smith, counsel for executors of Frick estate, in Llewelyn v. Frick, 268 U. S. 238, May 11, 1925.) The Supreme Court of the United States, however, instead of discussing the many points given above, limited its decision to the proposition that the Act of 1916 had no retroactive effect because it was not *by its express terms* retroactive in operation, and that therefore the proceeds of the policies of insurance, all of which had been taken out or assigned, or the beneficiary changed by Mr. Frick prior to the Act of 1916, should not have been included in the gross estate. The many vexing questions of law with respect to the taxable status of the proceeds of insurance policies under the Federal statutes remain, therefore, undetermined and unsettled. This provision of the Federal Estate Tax Act has again been made the subject of litigation in the case of Mack et al. v. Bowers, United States District Court for the Southern District of New York, L 38-23 June, 1926.

In this connection it is interesting to note that there is a question within the meaning of the revenue act as to whether or not insurance payable to the trustee under an insurance trust

agreement is payable to a named beneficiary or is to be regarded in the same light as insurance payable to the executor or administrator of the decedent's estate. There has been no specific ruling by the solicitor of the Internal Revenue Department on this subject, but if the wife, child, partner or any other individual is a "named beneficiary" as distinguished from the estate of the insured the inference is quite clear that the trustee under the insurance trust agreement *would* be regarded as a named beneficiary and therefore entitled to the $40,000 exemption.

It has been suggested, however, that if the deed of trust is by its terms for the purpose of providing funds for the payment of transfer, estate, succession and inheritance taxes on the estate of the decedent, it is equivalent to having the insurance payable to the executor or administrator of the decedent's estate and therefore the trustee under the insurance trust agreement for the purpose stated is not to be regarded as a named beneficiary and is not entitled to the $40,000 exemption. This is the ruling of the solicitor of the Internal Revenue Department (1924 Federal Estate Tax Regulations. Regulations 68, Article 26.

Prentice Hall Federal Tax Service, paragraphs 12217-19).

New York State

There are two New York statutes bearing on this subject (1) the Transfer Tax Act and (2) the Estate Tax Act.

Under both laws the proceeds of insurance policies which by their terms are payable to the executor or administrator of an insured's estate constitute part of the gross estate of the decedent and as part of that estate are taxable. Under the Transfer Tax Act the proceeds of insurance policies payable to a named beneficiary are not taxable as such, regardless of amount. The provisions of the Estate Tax Act, however, with respect to insurance are identical with those of the Federal estate tax law and the observations above with respect to that Act are equally applicable to the New York estate tax law.

The Solicitor of the Tax Department of the State of New York has ruled that if insurance is payable to a trustee under a deed of trust or any other named beneficiary for the express purpose of providing funds for the payment of transfer, estate, succession and

inheritance taxes on the estate of a decedent it constitutes part of the estate of the decedent and as part of that estate is subject to both transfer and estate taxes. (1925 Regulations, Art. 62, Prentice Hall New York State Tax Service, paragraph 131a, also footnote 2.) It is to be noted, however, that this is a mere opinion of counsel and is not a decision, and the Attorney General of Ohio in interpreting the laws of that state has ruled to the contrary.

In the case of an insurance trust created in New York by a non-resident of the state, three tax laws may be considered, in order to determine their applicability:

1. New York transfer tax on the estates of resident decedents.
2. New York transfer tax on the estates of non-resident decedents.
3. New York estate tax.

The New York transfer tax on the estates of resident decedents and the New York estate tax have no application even though the assets of the trust are in New York State at the time of donor's death. The only one of the three taxes which has any application is the New York transfer tax on the estates of

non-resident decedents and the application of this tax is so limited as to render it almost inoperative. In the first place, the provisions of the New York tax law on the estates of non-resident decedents and the rulings and the practice of the Tax Department of the state proceed on the assumption that these so-called "non-resident trusts" have no more effect in bringing the assets of the trust within the tax jurisdiction of the state than if the trust had never been created. In other words, if the donor, instead of creating a trust, had continued to hold the assets in his own possession at his residence in some other jurisdiction until the time of his death and no transfer tax were then payable to the State of New York, none is payable by reason of the creation of the trust in New York State. If, however, under such circumstances a New York tax were payable, then the trust assets in the hands of the trustee would be subject to the non-resident transfer tax and to precisely the same extent.

The New York transfer tax on non-resident decedents applies to a very limited class of property consisting of shares of stock of New York corporations and other items specifically enumerated in the act. If, therefore, the assets of a "non-resident trust" consist of

any of these specifically enumerated items of property a transfer tax on such items is payable at the time of the death of the donor, but as above stated such a tax if payable under these circumstances would have been payable anyhow if the decedent had retained possession of the assets at his residence until the time of his death.

The scope of the New York Transfer Tax on the estates of non-resident decedents has been still further restricted by the adoption of so-called "reciprocal" statutes in New York and other states. In these laws each state provides in effect that it will not levy non-resident transfer taxes on the property of residents of such other states as will in turn grant exemption from such taxation to the residents of New York; that is, New York will not tax the holdings of the estates of residents of Pennsylvania in New York corporations if Pennsylvania will in turn grant exemption to the estates of residents of New York on their holdings in Pennsylvania corporations. The number of states which have adopted this reciprocal legislation is already large, and it is likely that it will be almost universally adopted throughout the country in the near future. The states which have, or are about to

put into effect, the reciprocal statutes are the following:

Alabama	Nevada
Colorado	New Hampshire
Connecticut	New Jersey
District of Columbia	Ohio
Florida	Oregon
Georgia	Pennsylvania
Maine	Rhode Island
Maryland	Tennessee
Massachusetts	Vermont

Other Phases of the Taxing Statutes Federal and State

Entirely aside from the specific provisions of the revenue act requiring the inclusion of the proceeds of life insurance policies in the gross estate of a decedent, it is argued that the liability of the subject matter of an insurance trust to estate, transfer and inheritance taxes is fixed by the other provisions of the acts. In the Federal Revenue Act of 1926 it is provided that there shall be included in the gross estate property of which the decedent has at any time made a transfer in contemplation of death or a transfer taking effect in possession or enjoyment at or after death.

Similar provisions are found in the New York statutes. In the case of the unfunded trust, whether revocable or irrevocable in character, there is sound reason in arguing that the transfer is one in contemplation of death and also taking effect in possession or enjoyment at or after the death of the decedent because the trust does not really go into full operation until the death of the decedent and the collection of the proceeds of the insurance policies by the trustee.

In the case of the funded life insurance trust the same reasoning is not as forceful. If the trust is irrevocable in form and the insurance policies are endowment policies or policies which are full paid or which have a large cash surrender value, a long period of time may elapse between the creation of the trust and the death of the donor during which the life insurance policies might mature, be surrendered, and the funds received from the same be reinvested many times over, entirely changing the character of the trust from that in which it was invested at the time of the creation of the trust. It could, therefore, not be argued with particular force that the trust was one taking effect in possession or enjoyment at or after death, nor a trust made in

contemplation of death. Where, however, the policies are ordinary life policies and the course followed is that ordinarily contemplated by which the income of the trust is used for the payment of premiums on the life insurance policies until the death of the donor, it may be argued that the trust does not go into full operation until the death of the donor.

It should also be borne in mind that the revocable or irrevocable character of the trust agreement may bear on this question to the extent that it tends to show that the donor of the trust desires to retain some dominion over the property transferred to the trustee. If, on the other hand, the trust is irrevocable in character it tends to show that the donor of the trust has parted with all right, title and interest in and to the property and has relinquished all dominion over the same.

Finally it should be borne in mind that the taxability of the subject matter of the trust as property transferred in contemplation of death or interests taking effect in enjoyment at or after the death of the decedent should be determined by the terms of the trust and not by the subject matter of the trust. It has been held in innumerable decisions that an insurance policy is property based on contract

rights. Ordinarily this property does not become productive until the death of the insured. It is similar in character in this respect to unproductive mining property.

But the policy may be in endowment form maturing long before the death of the insured and the trust may, upon the maturity of the endowment policy, thus become immediately productive. Also under special circumstances the trustee might find it necessary to surrender the policy, accept the cash surrender value, and invest the proceeds. Such a case might arise if the insured, not covered by disability insurance, became totally incapacitated for work and the members of his family who were the beneficiaries of the insurance trust had no other means of support. There are many circumstances under which the trust might come into full operation and production long prior to the death of the insured. Furthermore, the trust might very well terminate prior to the death of the insured. If by its terms the trust is limited to two lives, such as the lives of the wife and mother of the donor, it might well terminate by the death of both beneficiaries prior to the death of the insured. If a trust by its limitations may terminate prior to the death of the insured the mere fact that the sub-

ject matter of the trust is property which ordinarily does not become productive until the death of the donor ought not to be conclusive in determining whether the trust is one made in contemplation of death or to take effect in possession or enjoyment at or after death.

It is not to be forgotten, however, that there is very little authority in the form of decided cases to sustain this position and in the absence of such cases doubt has been expressed by competent counsel as to the wisdom of advising clients that the trusts were not made in contemplation of death or taking effect in possession or enjoyment at or after death, and the practice among more careful practitioners is to withhold favorable expression of opinion.

It would seem, however, that the fundamental principles are so clear that the donor of an irrevocable unfunded trust may confidently expect (leaving out of consideration the specific tax on the proceeds of insurance policies) that the taxing authorities would be unable to sustain the proposition that the subject matter of the trust is property transferred in contemplation of death or the proposition that the donor has created an estate taking effect in possession or enjoyment at or after death.

CHAPTER VII.

Specimen Form of Insurance Trust Agreements

The following agreements are submitted as characteristic forms of funded and unfunded insurance trust agreements. Many of the clauses are inserted for the purpose of suggestion to counsel engaged in the preparation of an insurance trust agreement that the subject dealt with in that particular paragraph is one requiring attention and consideration. They are not in any sense standard forms but may be used as a guide in the drawing of an insurance trust agreement.

Unfunded Insurance Trust

Revocable

THE PARTIES

THIS DEED OF TRUST executed and delivered in New York City this day of , 192 , between of (hereinafter called the "donor") and National Bank of Commerce in New York (hereinafter called the "trustee")

WITNESSETH:

THE ESTABLISHMENT OF THE TRUST

Simultaneously with the execution of this agreement the donor has deposited with the trustee certain life insurance policies on the life of the donor described in Schedule "A" attached hereto which shall constitute the subject matter of this trust and are herein referred to as the "trust estate." The donor agrees that said policies shall be payable to the trustee and to that end will execute assignments, changes of beneficiary, and such other instruments as may be necessary. The trustee acknowledges the receipt of the policies and agrees to hold the same and to perform the duties of trustee subject to the following conditions:

PAYMENT OF PREMIUMS

1. The donor agrees to pay any premiums, assessments and other charges required to continue the policies in force and the trustee shall be under no duty to pay any of the same or to keep itself informed with respect to such payments, or as to the existence of any other facts necessary to keep said policies in force.

The trustee upon being informed as to the death of the donor or the earlier maturity of any of the policies shall proceed to collect and receive the proceeds thereof and is hereby authorized to execute all necessary receipts and releases to the insurance companies concerned.

INCOME FROM THE TRUST FUND

(*These provision are merely suggestions. The provisions for distribution of income and principal may vary widely, depending upon the circumstances of the donor and the members of his family. In this case it is assumed that the donor is a married man with a wife and three children, two boys and a girl, living at the time of the creation of the trust.*)

Provisions for Wife

2. The trustee shall hold, manage, invest and reinvest the proceeds of the insurance policies as and when received by it, shall collect the income, and after the payment of all taxes, charges, commissions and other expenses of the trust shall pay over the net income of the trust estate to , wife of the donor, for life.

Provisions for Children

Upon her death the trustee shall divide the principal of the trust estate into three equal parts or shares, one share for , son of the donor, one share for , son of the donor, and one share for , daughter of the donor.

During the minority of the respective children the

trustee shall use the income on their respective shares for the suitable support, maintenance and education of the said children, accumulating any balance of income that may not be required for this purpose and paying over to the respective beneficiaries such accumulations on the respective shares upon the arrival of the respective beneficiaries at majority. After the arrival of each such child of the donor at majority the income on his or her share shall be paid to him or her during the period of the trust with regard to each such share.

Upon the arrival of the respective sons at the age of twenty-five years, one-fourth of the principal on their respective shares shall be paid over and delivered to each of said sons absolutely. The trustee shall continue to hold the balance of the shares of principal belonging to said sons in trust until the arrival of the respective sons of the donor at the age of thirty years, and thereupon the trustee shall pay over and deliver another one-fourth of the principal of their respective shares to each of said sons of the donor absolutely. The trustee shall continue to hold the balance of the shares of principal belonging to said sons in trust until the arrival of the respective sons of the donor at the age of thirty-five years and thereupon the trusts as to the shares of principal of said sons shall terminate and the trustee shall pay over and deliver the balance of principal of the said shares remaining in its hands to said sons respectively absolutely.

In the event of the death of any son of the donor before the full amount of his share of principal shall have been granted, paid over and delivered to him, the said share of principal together with any accumulated

income thereon then in the hands of the trustee shall thereupon be paid over and delivered to his issue in equal shares per stirpes and not per capita absolutely, and, in the event of the death of any son of the donor without leaving issue him surviving then said principal and accumulated income shall thereupon be paid over and delivered to the next of kin of said son surviving at that time absolutely.

Upon the death of , daughter of the donor, the trustee shall pay over and deliver the principal of her share to her issue in equal shares per stirpes and not per capita absolutely. In the event of death of , daughter of the donor, without leaving issue her share of principal shall be granted, paid over and delivered to her next of kin surviving at that time absolutely.

POWERS OF THE TRUSTEE IN THE MANAGEMENT OF THE TRUST

3. The trustee shall have the following rights and powers:

A. The power in its uncontrolled discretion after the death of the donor to use and apply such part of the principal of the trust estate held for any beneficiary as it may consider suitable and necessary in the interest and for the welfare of such beneficiary.

(*This provision is inserted as a precaution against illness, misfortune or unforeseen reverses of family fortune.*)

B. The power to sell and convey any real estate which may be part of the subject matter of this deed of trust, free and clear of all trusts and limitations without any liability on the part of the purchaser or purchasers to see to the application of the purchase money.

(This provision is inserted to cover a residence for the family which might at any time be held under the trust, or any other real estate interests.)

C. The power to retain, sell, invest and reinvest in any stocks, bonds, securities or property of other nature which it, in its discretion, shall deem wise, necessary or expedient, without any responsibility for the exercise of its discretion and without being confined to what are known as "legal" investments.

(This provision is purely discretionary with the donor, who may prefer to limit the trustee's investments to "legal securities.")

D. The power to purchase securities or property from and also make loans or advancements to the executor or other representative of the donor's estate in case such executor is in need of cash with which to pay taxes, claims or other indebtedness of the donor's estate. Such loans or advancements may be secured or unsecured and the trustee shall not be liable in any way for any loss resulting to this trust estate by reason of the same having been made.

(This is a very important provision made to avoid the sacrifice of assets by the executor of the donor's estate.)

E. The power to exercise any right or option of subscription or otherwise, attached or which may at any time belong or be given to the holders of any stocks, bonds, securities or other instruments in the nature thereof, forming part of the trust estate.

This power and the two following powers are to facilitate the work of the trustee in handling the securities of the estate.

F. The power to join in any plan of lease, mortgage, consolidation, exchange, reorganization or foreclosure of any corporation in which the trust estate may hold stocks or bonds or other securities, and to take and hold any securities issued under such plan, and to pay any assessments involved therein.

G. The power to purchase securities at a premium and to charge the premium either against principal or income, or partly against principal and partly against income, as may be deemed best by the trustee in its discretion.

POWERS RESERVED TO THE DONOR

4. The donor shall have and possess the following rights and powers:

A. The right to withdraw any policy or policies deposited under this agreement or any funds at any time in the trust estate upon giving to the trustee a proper receipt therefor and the trustee agrees to execute and deliver any and all instruments that may be necessary to release the interest of the trustee in any such policies so withdrawn.

B. The right to exercise without the consent of the trustee or any beneficiary any and all options, elections, rights and privileges given to the assured under the terms of any policy held by the trustee hereunder, and the trustee agrees to execute any and all instruments that may be necessary to permit the exercise of such rights by the donor.

C. The right to receive any dividends or other earnings on any of said policies without accountability therefor.

D. The right to add to this trust insurance policies, securities or other property to be held by the trustee on the terms and conditions herein specified.

ACCOUNTS BY THE TRUSTEE

5. The trustee shall keep full books of account showing the condition of the trust estate which shall be open at all times to the inspection of the donor, and after the death of the donor to the beneficiary or beneficiaries of the trust estate for the time being.

PERIODICAL STATEMENTS TO THE BENEFICIARIES

6. After the collection of the proceeds of any policy by the trustee, the trustee shall render to the beneficiary or beneficiaries for the time being a statement showing the manner and form in which the trust is invested at least once annually.

INVIOLABILITY OF TRUST ESTATE

7. The principal and income of this trust fund shall be held by the trustee free and clear from the control, debts, liabilities and engagements of any beneficiary of this estate and the receipts of the beneficiaries shall be the sole discharge and release of the trustee.

COMPENSATION OF THE TRUSTEE

8. The trustee shall be entitled to compensation at the rate allowed trustees under the laws of the State of New York.

SIGNATURES OF PARTIES

IN WITNESS WHEREOF, the donor has hereunto set his hand and seal and National Bank of Commerce in New York, trustee, has caused these presents to be executed by its President or one of its Vice Presidents, with its corporate seal annexed, duly attested by its Trust Officer or one of its Assistant Trust Officers, done in duplicate the day and year first above written. Signed, sealed and delivered in the presence of

(L. S.)

NATIONAL BANK OF COMMERCE
IN NEW YORK, *Trustee*
By

President.

Attest:

Trust Officer.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } SS.:

On this day of ,
192 , before me personally appeared
, to me known and known to me to be the same person described in, and who executed the foregoing instrument and acknowledged that he executed the same for the purpose named.

Notary Public.

Funded Insurance Trust

Irrevocable

THE PARTIES

THIS DEED OF TRUST executed and delivered in New York City this day of , 192 , between of (hereinafter called the "donor") and National Bank of Commerce in New York (hereinafter called the "trustee")

WITNESSETH:

THE ESTABLISHMENT OF THE TRUST

Simultaneously with the execution of this agreement the donor has deposited with the trustee certain securities described in Schedule "A" attached hereto and certain life insurance policies on the life of the donor described in Schedule "B" attached hereto which shall constitute the subject matter of this trust and are herein referred to as the "trust estate." The donor hereby grants, bargains, sells, transfers, assigns and sets over the aforesaid trust estate with any additions thereto that may hereafter be made to the trustee subject to the following conditions and limitations:

MANAGEMENT OF TRUST AND PAYMENT OF PREMIUMS

1. The trustee shall hold, manage, invest and reinvest the principal of the trust estate, and shall collect the income. Policies of insurance held by the trustee hereunder shall be payable to the trustee, and

to that end the donor agrees to execute assignments, changes of beneficiary and any other instruments that may be necessary. The trustee shall utilize the income of the trust estate for the payment of premiums on the policies of insurance deposited with the trustee, and shall continue to make payment of the premiums so long as the donor shall live, until the policies become fully paid, or are surrendered as hereinafter provided. To assure the continued payment of the premiums on the policies the trustee is hereby authorized to retain in its hands an undistributed balance of cash income. After the payment of premiums on the policies and the retention of balance of income in suitable amount the trustee shall distribute any balance of income remaining to the donor. In the event that the income of the trust shall at any time be insufficient to meet the premiums due on the policies of insurance deposited hereunder the donor agrees to make up any such deficiency upon request of the trustee, and the trustee shall be under no liability for lapse of policy or otherwise upon the failure of the donor to provide any such deficiency.

The trustee is hereby invested with all right, title and interest in and to the policies and is authorized to exercise and enjoy all rights therein and beneficial interests thereunder as fully and effectually as the donor (the original policyholder). The insurance companies are hereby authorized and directed to recognize the trustee as fully entitled to all rights and interests under the policies and any receipts, releases and other instruments duly executed by the trustee in connection with said policies shall be binding and effective.

Collection of Proceeds of Insurance Policies

Upon the death of the donor or other maturity or surrender of the policy the trustee shall proceed to collect and receive the proceeds of said policies and upon receipt thereof the trustee shall hold, manage, invest and reinvest the principal thereof together with the principal of the securities theretofore deposited, shall collect the income and shall hold such principal and income upon the following conditions and limitations:

INCOME FROM THE TRUST FUND

(*These provision are merely suggestions. The provisions for distribution of income and principal may vary widely, depending upon the circumstances of the donor and the members of his family. In this case it is assumed that the donor is a married man with a wife and three children, two boys and a girl, living at the time of the creation of the trust.*)

2. After the payment of all taxes, charges, commissions and other expenses of the trust, the trustee shall pay over the net income of the trust estate to , wife of the donor, for life.

Provisions for Children

Upon her death the trustee shall divide the principal of the trust estate into three equal parts or shares, one share for , son of the donor, one share for , son of the donor, and one share for , daughter of the donor.

During the minority of the respective children the trustee shall use the income on their respective shares for the suitable support, maintenance and education of the said children, accumulating any balance of income that may not be required for this purpose and paying over to the respective beneficiaries such accumulations on the respective shares upon the arrival of the respective beneficiaries at majority. After the arrival of each such child of the donor at majority the income on his or her share shall be paid to him or her during the period of the trust with regard to each such share.

Upon the arrival of the respective sons at the age of twenty-five years, one-fourth of the principal on their respective shares shall be paid over and delivered to each of said sons absolutely. The trustee shall continue to hold the balance of the shares of principal belonging to said sons in trust until the arrival of the respective sons of the donor at the age of thirty years, and thereupon the trustee shall pay over and deliver another one-fourth of the principal of their respective shares to each of said sons of the donor absolutely. The trustee shall continue to hold the balance of the shares of principal belonging to said sons in trust until the arrival of the respective sons of the donor at the age of thirty-five years and thereupon the trusts as to the shares of principal of said sons shall terminate and the trustee shall pay over and deliver the balance of principal of the said shares remaining in its hands to said sons respectively absolutely.

In the event of the death of any son of the donor before the full amount of his share of principal shall have been granted, paid over and delivered to him, the said share of principal together with any accumulated

income thereon then in the hands of the trustee shall thereupon be paid over and delivered to his issue in equal shares per stirpes and not per capita absolutely, and, in the event of the death of any son of the donor without leaving issue him surviving then said principal and accumulated income shall thereupon be paid over and delivered to the next of kin of said son surviving at that time absolutely.

Upon the death of , daughter of the donor, the trustee shall pay over and deliver the principal of her share to her issue in equal shares per stirpes and not per capita absolutely. In the event of death of , daughter of the donor, without leaving issue her share of principal shall be granted, paid over and delivered to her next of kin surviving at that time absolutely.

POWERS OF THE TRUSTEE IN THE MANAGEMENT OF THE TRUST

3. The trustee shall have the following rights and powers:

A. The power in its uncontrolled discretion after the death of the donor to use and apply such part of the principal of the trust estate held for any beneficiary as it may consider suitable and necessary in the interest and for the welfare of such beneficiary.

(*This provision is inserted as a precaution against illness, misfortune or unforeseen reverses of family fortune.*)

B. The power to sell and convey any real estate which may be part of the subject matter of this deed of

trust, free and clear of all trusts and limitations without any liability on the part of the purchaser or purchasers to see to the application of the purchase money.

(*This provision is inserted to cover a residence for the family which might at any time be held under the trust, or any other real estate interests.*)

C. The power to retain, sell, invest and reinvest in any stocks, bonds, securities or property of other nature which it, in its discretion, shall deem wise, necessary or expedient, without any responsibility for the exercise of its discretion and without being confined to what are known as "legal" investments.

(*This provision is purely discretionary with the donor, who may prefer to limit the trustee's investments to "legal securities."*)

D. The power to purchase securities or property from and also make loans or advancements to the executor or other representative of the donor's estate in case such executor is in need of cash with which to pay taxes, claims or other indebtedness of the donor's estate. Such loans or advancements may be secured or unsecured and the trustee shall not be liable in any way for any loss resulting to this trust estate by reason of the same having been made.

(*This is a very important provision made to avoid the sacrifice of assets by the executor of the donor's estate.*)

E. The power to exercise any right or option of subscription or otherwise, attached or which may at any time belong or be given to the holders of any stocks, bonds, securities or other instruments in the nature thereof, forming part of the trust estate.

F. The power to join in any plan of lease, mortgage, consolidation, exchange, reorganization or foreclosure of any corporation in which the trust estate may hold stocks or bonds or other securities, and to take and hold any securities issued under such plan, and to pay any assessments involved therein.

G. The power to purchase securities at a premium and to charge the premium either against principal or income, or partly against principal and partly against income, as may be deemed best by the trustee in its discretion.

(Provisions E, F, and G are to facilitate the work of the trustee in handling the securities of the estate.)

POWER RESERVED TO THE DONOR

4. The donor shall have and possess the following right and power:

The right to add to this trust estate insurance policies, securities or other property to be held by the trustee on the same terms and conditions as hereinbefore provided with respect to the securities and insurance policies originally deposited.

DIVIDENDS ON POLICIES

5. The trustee is hereby authorized and directed to exercise any option given the policyholder under

policies of insurance deposited hereunder with respect to the distribution of dividends on said policies to the end that the dividends payable thereon shall without further request or authorization on the part of the policyholder be used for the purchase of additional insurance on the life of the donor. In the event that any of the policies deposited hereunder do not permit the exercise of such option by the policyholder, or if for any other reason it becomes impossible or impracticable in the discretion of the trustee to utilize said dividends for this purpose, then said dividends may be utilized for the payment of premiums on any policy of insurance deposited hereunder or for the establishment of the reserve fund of income hereinbefore authorized, or if other funds in the hands of the trustee be sufficient for these purposes then the trustee is authorized and directed to distribute said dividends to the donor.

ACCOUNTS BY THE TRUSTEE

6. The trustee shall keep full books of account showing the condition of the trust estate which shall be open at all times to the inspection of the donor, and after the death of the donor to the beneficiary or beneficiaries of the trust estate for the time being.

PERIODICAL STATEMENTS TO THE BENEFICIARIES

7. After the collection of the proceeds of any policy by the trustee, the trustee shall render to the beneficiary or beneficiaries for the time being a statement

showing the manner and form in which the trust is invested at least once annually.

INVIOLABILITY OF TRUST ESTATE

8. The principal and income of this trust fund shall be held by the trustee free and clear from the control, debts, liabilities and engagements of any beneficiary of this estate and the receipts of the beneficiaries shall be the sole discharge and release of the trustee.

IRREVOCABILITY OF TRUST

9. The donor has been fully informed by counsel as to his rights and as to the legal effect of this instrument and upon due consideration hereby declares this trust to be irrevocable.

RECEIPT FOR TRUST ASSETS

10. The trustee hereby acknowledges receipt of the securities and insurance policies constituting the trust estate and agrees to hold the same and to perform the duties of trustee on the conditions and limitations hereinbefore prescribed.

SIGNATURES OF PARTIES

IN WITNESS WHEREOF, the donor has hereunto set his hand and seal and National Bank of Commerce in New York, trustee, has caused these presents to be executed by its President or one of its Vice Presidents, with its corporate seal annexed, duly attested by its

Trust Officer or one of its Assistant Trust Officers, done in duplicate the day and year first above written.
Signed, sealed and delivered in the presence of

(L. S.)

NATIONAL BANK OF COMMERCE
IN NEW YORK, *Trustee*

By

Vice President.

Attest:

Assistant Cashier.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } SS.:

On this day of , 192 , before me personally appeared , to me known and known to me to be the same person described in, and who executed the foregoing instrument and acknowledged that he executed the same for the purpose named.

Notary Public.

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